



House of Representatives

General Assembly

File No. 733

January Session, 2007

House Bill No. 6559

House of Representatives, May 3, 2007

The Committee on Appropriations reported through REP. MERRILL of the 54th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING THE UNDERGROUND STORAGE TANK FUND AND ATTORNEYS' FEES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (a) of section 22a-449c of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective from*
3 *passage*):

4 (a) (1) There is established an account to be known as the
5 "underground storage tank petroleum clean-up account". The
6 underground storage tank petroleum clean-up account shall be an
7 account of the Environmental Quality Fund. Notwithstanding any
8 provision of the general statutes to the contrary, any moneys collected
9 shall be deposited in the Environmental Quality Fund and credited to
10 the underground storage tank petroleum clean-up account. Any
11 balance remaining in said account at the end of any fiscal year shall be
12 carried forward in said account for the fiscal year next succeeding.

13 (2) The account shall be used by the Commissioner of

14 Environmental Protection to provide money for reimbursement or
15 payment pursuant to section 22a-449f, to responsible parties or parties
16 supplying goods or services, for costs, expenses and other obligations
17 paid or incurred, as the case may be, as a result of releases, and
18 suspected releases, costs of investigation and remediation of releases
19 and suspected releases, and for claims by a person other than a
20 responsible party for bodily injury, property damage and damage to
21 natural resources that have been finally adjudicated or settled with the
22 prior written consent of the board. The commissioner may also make
23 payment from the account to an assignee who is in the business of
24 receiving assignments of amounts approved by the board, but not yet
25 paid from the account, provided the party making any such
26 assignment, using a form approved by the commissioner, directs the
27 commissioner to pay such assignee, that no cost of any assignment
28 shall be borne by the account and that the state and its agencies shall
29 not bear any liability with respect to any such assignment.

30 (3) Notwithstanding the provisions of this section regarding
31 reimbursements of parties pursuant to section 22a-449f and regulations
32 adopted pursuant to section 22a-449e, and regardless of when an
33 application for payment or reimbursement from the account may have
34 been submitted to the board, payment or reimbursement shall be made
35 in accordance with the following: (A) After June 1, 2004, no payment
36 or reimbursement shall be made for any costs, expenses and other
37 obligations paid or incurred for remediation, including any monitoring
38 to determine the effectiveness of the remediation, of a release to levels
39 more stringent than or beyond those specified in the remediation
40 standards established pursuant to section 22a-133k, except to the
41 extent the applicant demonstrates that it has been directed otherwise,
42 in writing, by the commissioner; (B) after June 1, 2005, no payment or
43 reimbursement from the account shall be made to any person for
44 diminution in property value or interest, provided reimbursement for
45 interest accrued on attorneys' fees for an application filed on or before
46 March 31, 2003, where such application has been pending for three
47 years or more, shall be permitted; and (C) after June 1, 2005, no
48 payment or reimbursement from the account shall be made for

49 attorneys' fees or other costs of legal representation paid or incurred as
 50 a result of a release or suspected release (i) in excess of five thousand
 51 dollars to any responsible party, (ii) in excess of ten thousand dollars
 52 to any person other than a responsible party, and (iii) by a responsible
 53 party regarding the defense of claims brought by another person,
 54 except that applications for reimbursement filed on or before June 30,
 55 2005, shall not be subject to the limitations for reimbursement imposed
 56 by clauses (ii) and (iii) of this subparagraph. In addition,
 57 notwithstanding the provisions of this section regarding
 58 reimbursements of parties pursuant to section 22a-449f, the responsible
 59 party shall bear all costs of the release that are less than ten thousand
 60 dollars and all persons shall bear all costs of the release that are more
 61 than one million dollars, except that for any such release which was
 62 reported to the department prior to December 31, 1987, and for which
 63 more than five hundred thousand dollars has been expended by the
 64 responsible party to remediate such release prior to June 19, 1991, the
 65 responsible party for the release shall bear all costs of such release
 66 which are less than ten thousand dollars or more than five million
 67 dollars, provided the portion of any reimbursement or payment in
 68 excess of three million dollars may, at the discretion of the
 69 commissioner, be made in annual payments for up to a five-year
 70 period. There shall be allocated to the department annually, for
 71 administrative costs, two million dollars.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>from passage</i>	22a-449c(a)
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ENV *Joint Favorable C/R*

APP

APP *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Department of Environmental Protection	SF - See Below	Potential Significant	Potential Significant

Note: SF=Special Fund (Non-appropriated)

Municipal Impact: None

Explanation

The legislation would clarify that the \$10,000 cap on legal fees does not apply to any application that was pending before the cap was implemented in 2005. The bill would also allow for the payment of interest on legal fees if the applications upon which interest is granted were filed on or before March 31, 2003, and such application had been pending for 3 years or more. The estimated cost to the underground storage tank petroleum clean up account (UST account) associated with the change concerning interest would be approximately \$324,000 based on legal fees of approximately \$345,000, and 18% annual interest for 4 years. The bill also provides that there be an exception to the limits on the payment of attorneys fees or other legal costs for applications for reimbursement from the UST account filed on or before June 30, 2005 for the defense of claims brought by another person. The change would increase the liability of the account and the increase is anticipated to be significant, and potentially in the millions. The UST account is funded through a \$3 million per quarter, \$12 million per year, earmarking of the petroleum products gross earnings tax.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**HB 6559*****AN ACT CONCERNING THE UNDERGROUND STORAGE TANK FUND AND ATTORNEYS' FEES.*****SUMMARY:**

This bill broadens eligibility for reimbursement from the Underground Storage Tank (UST) Petroleum Clean-Up Account for costs incurred because of leaking USTs. Current law bars the environmental protection commissioner from reimbursing claims for reduced property value or for interest. The bill authorizes the commissioner to reimburse these claims for interest on attorneys' fees (1) filed on or before March 31, 2003 and (2) pending for at least three years.

Current law also bars the commissioner from reimbursing claims for attorneys' fees or other legal costs made by (1) a responsible party for more than \$5,000 (see BACKGROUND), (2) a responsible party defending himself against another person's claim, and (3) anyone other than a responsible party for more than \$10,000. The bill allows the commissioner to reimburse claims in the last two categories if they were filed on or before June 30, 2005.

EFFECTIVE DATE: Upon passage

BACKGROUND***Underground Storage Tank Petroleum Clean-Up Account***

This account, an account of the Environmental Quality Fund, is funded from the petroleum products gross earnings tax. A UST Petroleum Clean-Up Account Review Board decides which claims to reimburse. Claims may be filed by (1) "responsible parties;" (2) parties supplying goods or services for costs and expenses incurred because of leaking USTs, including costs of investigation and remediation; and

(3) people other than responsible parties, for bodily injury, property damage and damage to natural resources. To be reimbursable, claims in the third category must be (1) finally adjudicated or (2) settled with the board's prior written consent.

Responsible Party

The law (CGS § 22a-449a (3)) includes two definitions of responsible party, depending on when the board received a claim for payment. For claims received before July 1, 2005, a responsible party is anyone who owns or operates a UST from which a release or suspected release takes place.

For post July 1, 2005 claims, a responsible party is anyone who, at any time (1) owns, leases, uses, operates, or has an interest in a UST from which a leak or suspected leak occurred or (2) owns, leases, uses, or has an interest in property where there is a UST. These people are responsible parties regardless of whether they had an interest in the UST or the property when the leak occurred. A responsible party also includes anyone related to someone in the first two groups through a family, contractual, corporate, or financial relationship.

COMMITTEE ACTION

Environment Committee

Joint Favorable Change of Reference

Yea 30 Nay 0 (03/16/2007)

Appropriations Committee

Joint Favorable

Yea 48 Nay 0 (04/19/2007)